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IN THE

Supreme Court of the United States

October Term, 1947

No. 75

MANDEVILLE ISLAND FARMS, INC., a corporation, and ROSCOE C. ZUCKERMAN,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a corporation,

RESPONSE TO PETITION FOR REHEARING.

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RESPONSE TO PETITION FOR REHEARING.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

This Court has held that under the allegations of the amended complaint; defendant Sugar Company has been guilty of violating the Sherman Act. The Sugar Company has applied for a rehearing. Its application is not based upon the merits but upon an alleged disavowal or waiver by plaintiffs of their cause of action. The defendant Sugar Company in effect admits it has violated the Sherman Act under the allegations of the complaint, but seeks to avoid responsibility to the parties it has wronged by claiming that such parties waived their rights by a stipulation entered into below. This is based upon what was supposed to have occurred before the trial Judge, when that Judge "stated from the bench to counsel herein that he felt that the first cause of action, if supplemented

by copies of the contracts attached to the defendant's motion to dismiss, would not state facts sufficient to constitute a cause of action, and suggested that it would be a tremendous saving of time and expense if the complaint were amended." [Tr. p. 65.]

Defendant Sugar Company, in applying for a rehearing, does not produce, and it has at no time produced the record of what actually transpired before the trial court, but *makes its entire argument upon assumptions as to the record that are untrue and completely contrary to the record.*

In order to avoid any further misunderstanding, we have had the proceedings written up by the official reporter of the District Court. Attached hereto as a supplement is a copy of Reporter's Transcript of those proceedings certified to as correct by the reporter.

This clearly shows that, not only was there no waiver or disavowal, but that *the trial court specifically assured the plaintiffs' attorney that he was not being asked to abandon anything.* It further shows that the words were eliminated because both the trial court and the attorney for the Sugar Company thought that they were susceptible of being construed as alleging *that the sugar beets themselves were transferred across State lines.*

We quote from the Reporter's Transcript, page 3 *et seq.* (emphasis added):

> "The Court: But regardless of what I think, we should look at this case from a practical point of view. What is best for the parties?
>
> * * * * * * * *
>
> I want to say frankly, gentlemen, as I understand the claim of the plaintiffs that by reason of the grow-

ing of beets and agreeing to sell them to the refinery, brings the case within the purview of the Anti-Trust Act.

The pleadings here use some very broad language. *They speak of the transportation of beets and sugar in interstate commerce.*

I assume the evidence will show that beets were sold to the sugar refinery and were processed and the sugar then entered into interstate commerce.

Mr. Arndt: *I don't think we allege the beets themselves were in interstate commerce.*

Mr. Whyte: *Yes, you do. I assumed th[illegible] was an oversight.*

The Court: *There is some language with reference to sugar and sugar beets in the complaint.* I believe it is on page 7:

"* * * unlawfully monopolize and restrain trade and commerce *in sugar and sugar beets* among the several states * * *"

Mr. Arndt: *We do not allege, your Honor, that the beets themselves were physically transported. It is our contention that under the decisions the entire situation was interstate commerce. We do not claim that there was a physical transportation of the beets over state lines.*

The Court: *I feel, however, that that allegation precludes the court from making a ruling.*

I felt that if this complaint could be made clear *in that respect* and the contracts pleaded that a ruling would enable counsel to appeal the case without too much cost.

I want to say frankly that I feel this is not an interstate commerce case. I have spent some two

weeks studying it and I have a number of my own authorities. I have examined those authorities and I feel if this first cause of action could be ruled on with the contracts and the pleadings in proper shape, that it would be an inexpensive matter to appeal and determine whether or not I am wrong.

On the other hand, if the case should be tried it would be a very expensive matter."

The trial court [commencing at Rep. Tr. p. 6], stated:

"It seems there is no end of reading when you start examining these various cases, but I haven't found anything that makes me feel that an agricultural product enters into interstate commerce by reason of being delivered to a processor that is engaged in interstate commerce and who processes that particular agricultural commodity." * * *

"Now, the contracts or portions of the contracts are pleaded in your motion to dismiss. You set them forth and indicate that I could use those contracts in passing upon this motion.

Mr. Whyte: I wasn't sure, your Honor. Those authorities did give some indication of it.

The Court: But they weren't very convincing to me and I felt I should let counsel take their choice on that—that is, if you wanted to build up an expensive record in view of the court's attitude in the matter or wanted to get this thing in shape so it would be squarely before the reviewing court on the pleadings. In other words, I do not want to cause you unnecessary expense."

On page 16 of the Reporter's Transcript, the following occurred:

"The Court: Let me ask this question as a matter of general information. These beets are processed in

the refineries and following that is the sugar immediatley put on the market?

Mr. Whyte: There is some lag, I suppose, according to supply and demand.

Mr. Arndt: In some years it is immediately sold and some years there is a carry-over. Right now there is a shortage and it is sold immediately.

In 1939, '40 and '41 there was an overproduction and it was not immediately sold. It is as counsel says, a question of supply and demand whether sold immediately or not sold immediately. *As a matter of fact, I think the cause of our present lack of supply of sugar is due to these contracts."*

On page 19 the following occurred:

"The Court: Well, I have read your cases, counsel, and I have probably given more time to this case, particularly on a motion to dismiss, than I have on any other case for a long time.

In the first place it was a new subject to me and it was interesting. There is such a thing as convincing myself to the contrary, but at this time I am convinced that these beet growers are not entitled to protection under the Anti-Trust Act. I may be wrong. It won't be the first time I have been wrong, and it will probably not be the last time either. But I do feel that the pleadings without pleading the contracts and with this particular language in there, makes it difficult to dismiss in view of the general language used and the liberality of pleadings under the Federal Rules of Civil Procedure.

Mr. Whyte: Doesn't your Honor have discretion to grant the motion with leave to amend?

The Court: I have had this rather frank, informal discussion with counsel to let them know what I have been thinking. I don't know how you gentlemen

could approach the subject other than for me to sit here and listen. *I was in hopes that counsel would see fit to amend the first cause of action so that we could get a definite ruling because if we try it and then I should rule as I do now you would be unable to prove that the beets went into interstate commerce and after going through all those preliminary steps and building up a record I don't know whether you would be any better off or not.*

Mr. Arndt: Then how is it procedurally possible? Suppose I do amend and set forth the contracts? How is it procedurally possible to have an appeal without a trial? I am not going to abandon my second count.

The Court: *I am not asking you to abandon anything. I want you to understand I am only trying to be helpful.* I want to try to decide this case correctly. At the same time I feel that if these matters could be reached and have a ruling on this question that it would save you both money because if the court rules with you on this first cause of action then the law of the case is going to be established and it would be settled. On the other hand, if we try it and build up a record and the court reverses it and sends it back for retrial, you would have to go through the same thing again" [p. 21].

After reading this record it is patent that there was no waiver or disavowal on the part of the plaintiffs nor any intent to disavow anything except to state that the sugar beets themselves did not physically cross the State line. The Trial Judge specifically stated that he was not asking plaintiffs to abandon anything and yet defendant insists that plaintiffs abandoned their entire cause of action by entering into the stipulation that the District Judge urged! The memory of counsel for defendant Sugar Company

and the memory of counsel for plaintiff were faulty at the time of the oral argument but the record now speaks for itself.

In view of this record, it is impossible to understand the statement made by defendant Sugar Company on page 2 of its Petition with reference to the Sugar Company and the District Court having been "entrapped" by a stipulation. It was the District Judge who thought that the inclusion of the words "sugar and sugar beets" in paragraph XI of the original complaint was susceptible of being construed as alleging that the sugar beets crossed the State line. It was Mr. Whyte, one of the attorneys for the Sugar Company, who insisted that such was his interpretation of the words. If anybody was entrapped it was the plaintiffs, the victim of the conspiracy. They acceded to the urgings of the trial Court and amended their complaint only after being assured by that Court that they were not being asked to abandon anything. They now find that defendant claims that by so doing they have abandoned all of their rights herein!

It is perhaps significant that the point now relied upon by defendant was not raised by it in the Circuit Court of Appeals, nor was it raised in the answer to the petition for certiorari herein, but was raised for the first time in its brief filed a few days before the oral argument, too late for plaintiff to have the record written up.

We feel that if the record had been written up and had been presented to the Court at the time of the oral argument, the two Justices here who dissented would not have dissented.

Paragraph XIX of the amended complaint specifically states:

> "By reason of the foregoing acts of the defendant and its said conspirators, *interstate commerce in sugar was illegally restrained, competition therein was not only substantially lessened but was destroyed, the price of sugar beets was illegally fixed, and an illegal monopoly was established,* all in violation of the anti-trust laws of the United States, to the damage of plaintiffs as aforesaid." (Emphasis added.)

Defendant Sugar Company brushes that aside by contending that it is a mere conclusion of the pleader. If that be a mere conclusion of the pleader, then a like allegation contained in paragraph XI of the original complaint is a conclusion of the pleader—but defendant Sugar Company does not so contend. It contends that the allegations of said paragraph XI are so vital, important and material that striking out the words "sugar and sugar beets" therein was a waiver, disavowal and abandonment of plaintiffs' cause of action, while the inclusion of like allegations in paragraph XIX of the amended complaint was a mere conclusion of the pleader! Such inconsistency shows the utter lack of merit in defendant's contention.

Defendant Sugar Company, on the record, is guilty of violation of the Sherman Act. It is endeavoring to squirm out of that liability by ignoring the record and imagining a waiver that never took place. The plaintiff farmers, victims of the alleged conspiracy, had no intention to disavow or waive their causes of action herein and they

did not do so. *They stipulated only after having been assured by the Trial Judge that they were not abandoning anything.* To hold that they did abandon their cause of action by acceding to the District Court's urging would indeed be an "entrapment," but it would not be justice.

Plaintiffs respectfully urge that the petition for rehearing be denied.

Respectfully submitted,

GUY RICHARD CRUMP,

STANLEY MORRIS ARNDT,

Attorneys for Mandeville Island Farms, Inc., and Roscoe C. Zuckerman.

Certificate of Counsel.

I, Stanley Morris Arndt, do hereby certify that I am one of the attorneys for Mandeville Island Farms, Inc., and Roscoe C. Zuckerman; that the foregoing response is presented in good faith and not for delay.

STANLEY MORRIS ARNDT.

SUPPLEMENT.

SUPPLEMENT.

In the District Court of the United States for the Southern District of California, Central Division.

Honorable Ben Harrison, Judge Presiding.

Mandeville Island Farms, Inc., a corporation, and Roscoe C. Zuckerman, Plaintiffs, vs. American Crystal Sugar Company, a corporation, Defendant. No. 4643-BH-Civil.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, November 13, 1945

Appearances:

For the Plaintiffs: Messrs. Wood, Crump, Rogers & Arndt, By Stanley Arndt, Esquire.

For the Defendant: O'Melveny & Myers, and Pierce Works, and John Whyte, Esquire, By John Whyte, Esquire.

[Rep. Tr. p. 2, lines 1 to 25]:

Los Angeles, California, Tuesday, November 13, 1945

10:00 A. M.

The Court: You may proceed.

The Clerk: 4643-BH, Civil, Mandeville Island Farms and others versus American Crystal Sugar Company.

Motion of defendant to dismiss or in the alternative to strike from the complaint, or for a more definite statement or for a bill of particulars, pursuant to notice, motion, and points and authorities.

Mr. Arndt: The plaintiff is ready.

Mr. Whyte: The defendant is ready.

The Court: You may proceed.

Mr. Whyte: If the court please, this is a motion to dismiss, or in the alternative to strike from the complaint—

The Court: I have read the pleadings and have spent about two weeks studying this matter. I will not need a statement as to what is contained in your pleadings.

Mr. Whyte: I assume your Honor has read our points and authorities. I don't know how Mr. Arndt feels about it, but our position is set forth in our points and authorities and are just as I would present them to your Honor orally.

The Court: I would like a discussion with you gentlemen as to several points that I have in mind.

As I read the pleadings generally, they cover really two points. There are two points involved. One concerns [Rep. Tr. p. 3, lines 1 to 25]:

itself with the Anti-Trust Act and secondly there is an accounting question. And it seems that those two questions are split up into four causes of action.

One question I have in mind is whether your first cause of action, in using the language that you do, it might be subject to what in State practice would be called a general demurrer.

But regardless of that I think we should look at this case from a practical point of view. What is best for the parties?

It is quite apparent to me from a reading of the pleadings that the question is whether a beet grower who enters into an agreement wtih a sugar refinery whereby the sugar refinery agrees to pay the current price for beets is a basis for the payment of beets by the other refineries in this particular area. The area is described as being north of the 36th parallel.

I want to say frankly, gentlemen, as I understand the claim of the plaintiffs that by reason of the growing of beets and agreeing to sell them to the refinery, brings the case within the purview of the Anti-Trust Act.

The pleadings here use some very broad language. They speak of the transportation of beets and sugar in interstate commerce.

I assume the evidence will show that beets were sold [Rep. Tr. p. 4, lines 1 to 25]:

to the sugar refinery and were processed and the sugar then entered into interstate commerce.

Mr. Arndt: I don't think we allege the beets themselves were in interstate commerce.

Mr. Whyte: Yes, you do. I assumed that was an oversight.

The Court: There is some language with reference to sugar and sugar beets in the complaint. I believe it is on page 7:

> "* * * unlawfully monopolize and restrain trade and commerce in sugar and sugar beets among the several states * * *."

Mr. Arndt: We do not allege, your Honor, that the beets themselves were physically transported. It is our contention that under the decisions the entire situation was interstate commerce. We do not claim that there was a physical transportation of the beets over state lines.

The Court: I feel, however, that that allegation precludes the court from making a ruling.

I feel that if this complaint could be made clear in that respect and the contracts pleaded that a ruling would enable counsel to appeal the case without too much cost.

I want to say frankly that I feel this is not an interstate commerce case. I have spent some two weeks

[Rep. Tr. p. 5, lines 1 to 25]:

studying it and I have a number of my own authorities. I have examined those authorities and I feel if this first cause of action could be ruled on with the contracts and the pleadings in proper shape, that it would be an inexpensive matter to appeal and determine whether or not I am wrong.

On the other hand, if the case should be tried it would be a very expensive matter.

You cited the Apex Hosiery Company vs. Leader, 310 U. S., page 502. I think you will find that page 512 contains must stronger language. But neither of you have cited the case of Parker vs. Brown, 317 U. S., page 341, which went up from this district. While it is not an anti-trust case it involved the question of whether or not raisins before entering into interstate commerce were to be classified as coming within the purview of the Interstate Commerce Act.

Of course that involved a state regulation. That case was tried by a three-judge court and a decision was had with Judge Yankwich dissenting and the Supreme Court agreed with Judge Yankwich in that case.

In reading these cases they almost create a state of confusion because where state regulations are concerned the courts are not inclined to assume jurisdiction but yet in anti-trust cases they are. There is one case that is probably not controlling but it is persuasive, and that is

[Rep. Tr. p. 6, lines 1 to 25]:

an Alabama case in 127 Southern. I feel very strongly that as a trial court it is not my function to expand upon the meaning of interstate commerce. I think that is a problem for the appellate court and really the Supreme Court.

It seems there is no end of reading when you start examining these various cases, but I haven't found anything that makes me feel that an agricultural product enters into interstate commerce by reason of being delivered to a processor that is engaged in interstate commerce and who processes that particular agricultural commodity. I can understand the differentiation in wheat cases, where the wheat simply is purchased in interstate commerce and moves in its present form. It was, however, rather hard for me to understand the raisin case because raisins are delivered to the processor who finally enters them into the stream of interstate commerce. They don't change their form any. But here we have sugar beets that are completely changed. Only a very small percentage of the beet eventually enters into and becomes sugar. I believe in this particular case it is between 16 and 17 per cent.

Now, the contracts or portions of the contracts are pleaded in your motion to dismiss. You set them forth and indicate that I could use those contracts in passing upon this motion.

Mr. Whyte: I wasn't sure, your Honor. Those authorities did give some indication of it.

[Rep. Tr. p. 7, lines 1 to 25]:

The Court: But they weren't very convincing to me and I felt I should let counsel take their choice on that—that is, if you wanted to build up an expensive record in view of the court's attitude in the matter or wanted to get this thing in shape so it would be squarely before the reviewing court on the pleadings. In other words, I do not want to cause you unnecessary expense.

And there is another question that has occurred to me. Why aren't these growers co-conspirators also? They

entered into a contract and the terms of the contract are clear. They agreed to all these things. Why aren't they co-conspirators?

Mr. Arndt: They knew nothing about the conspiracy, your Honor. We discovered it years afterward.

The Court: The contracts indicate a conspiracy to control the price of beets. It indicates that all the growers in that area received the same price for their beets.

Mr. Arndt: May I give your Honor this example? Suppose that all of the dealers in a given manufactured product—say all second-hand car dealers in California got together and they said or agreed not to pay more than X dollars for such and such a car and Y dollars for this car and Z dollars for that car; and they agreed that if they sell they would only sell them at certain prices. [Rep. Tr. p. 8, lines 1 to 25]:

Mr. Jones wants to sell his car. He either has to sell it to one of these dealers or he can't sell it at all. Is he a co-conspirator? And are these beet growers that have no other place to sell except to one of these three people conspirators? They are helpless.

The Court: They are not helpless because they entered into this agreement before they planted their beets. In other words, they entered into an agreement whereby the seed was to be furnished and specified the terms of the sale. They recognized that north of the 36th parallel they were to receive the current market price. In substance what that means is the current market price that the other refineries in that area paid.

Now, they knew when they signed that agreement that they were going to receive the average price that the other refineries received. Now, why aren't they co-conspirators? That is just a question that occurred to

me when reading that agreement. In reading the agreement it certainly makes the court feel that there was in fact an agreement between the sugar refineries of that area to pay a certain price for the beets. And it is also clear that the beet growers agreed to accept such a price. Now, why aren't they a part of it?

Mr. Arndt: I refer your Honor to the Bausch & Lomb Optical Company case, 321 U. S. 707. In that case, your Honor, the Bausch & Lomb Company made [Rep. Tr. p. 9, lines 1 to 25]:

the individual dealers in each state agree they would only sell under certain conditions and they either had to sell under those conditions or they couldn't get the lenses. Well, the individual dealers were not guilty of any conspiracy.

The Court: You have a different situation there. There is nothing here to indicate there wasn't free competition as far as the sale of this sugar was concerned. Any suppression of competition was suppression between the three refineries in the amount that they would pay the beet growers.

The beet growers depended upon their product, a root product, a bulb, and shipped them to the refinery, the refinery processed them and passed the finished product into the stream of interstate commerce.

Now, if the plaintiffs in this case were not a party to the agreement the sugar refineries could not have operated.

Mr. Arndt: Let me give you another example.

The Court: Just a moment. I have not followed that thought through nor attempted to. I just thought I would call counsel's attention to it because it was rather intriguing to me. I have thought about it over the week-

end and it just occurred to me that they were all parties to it. There is only one refinery named as a defendant, when as a matter of fact all three of them should have [Rep. Tr. p. 10, lines 1 to 25]:
been joined as defendants.

Mr. Arndt: I have cases on that.

The Court: They were all co-conspirators and each liable if they had been named as defendants. You could have brought them all in just as easily as you could have brought one. I have brought up the question as to whether or not these beet growers are parties to the conspiracy to give you something to think about. I am just throwing that out to you as a thought and if it becomes necessary I will be glad to have you gentlemen spend your time briefing it. I have spent all the time I could on the question, and even before I left for the North and since returning, and to me it was a very interesting and intriguing proposition.

Mr. Arndt: May I be heard briefly on the two points your Honor raises?

The Court: Certainly.

Mr. Arndt: Let us take the grocery case. The exact argument was made there involving the wholesale grocers association operating in Southern California and Northern California. The exact argument was made as is here being presented by your Honor.

There they said the retail grocers only sold here locally —only sold in California; that the product they sold was sold by them at retail to the ultimate consumer.
[Rep. Tr. p. 11, lines 1 to 25]:

There was nothing sold in interstate commerce but the Circuit Court held you cannot separate, you cannot take

an isolated portion of an industry. The particular groceries came to these grocery men through interstate commerce and because it came to them through interstate commerce the sale of the groceries to the ultimate consumer was in interstate commerce. They said you could not isolate one item and not consider the others.

I cannot see how you can possibly reconcile that decision with the thoughts that your Honor has given us here, because the difference between the raisin growers case and this is a very simple one.

Here the contract provides that the sale is not consummated until the product is sold, the raw sugar is sold, and the raw sugar is sold in interstate commerce. Therefore, the activities in interstate commerce are a part of the very contract itself. Until the sale is made in interstate commerce we don't know what the grower is going to get, so to say we can separate—we can throw out of the contract the portion that provides for the price, is to take a part of the contract away that is an essential part of the contract.

We have alleged in our complaint that prior to 1939 the method of sale—how it was done. And we have alleged that they joined together to change this method of sale. [Rep. Tr. p. 12, lines 1 to 25];

Now, the various other cases that we have cited from the United States Supreme Court are all recent cases, and they all say that you cannot take one part of a transaction and separate it and say that because one act was done in interstate commerce—we have cited case after case, your Honor, in which that very argument was made as is being made here, that you could isolate one part

of it and say that is not interstate commerce, because in each one of these cases you could isolate some transaction.

The court there said it couldn't be done and here is the vice of what has happened here. Prior to 1940—prior to 1939 the three companies competed in interstate commerce as to their sales organization. Each tried to make the most efficient sales, each tried to produce most efficiently for interstate commerce, but after the conspiracy and as a part thereof they ceased to compete with each other. They were not interested any more in competing as to the efficiency of their sales organization or anything else because they had this plan and conspiracy.

Interstate commerce was much more directly affected in this case than it was in the wholesale grocers case. In the wholesale grocers case there was only an indirect connection. Here there is a contractual connection with interstate commerce as provided by the very contract [Rep. Tr. p. 13, lines 1 to 25]; itself.

Now, as to the second point your Honor raised. I don't see how that is practical because we have a second count here which does state a cause of action.

The Court: I have been talking about the big issue in this case.

Mr. Arndt: But how can there be an appeal until the second count is determined? There can't be an appeal from an order on one count only.

The Court: I think it was Justice McKenna who said in effect:

> "To carry your argument to its natural conclusion the Anti-Trust Act would cover everything."

Mr. Arndt: And that is what the Supreme Court has done.

The Court: It hasn't, as I view it, in light of the opinion in Parker vs. Brown.

While that was not an anti-trust case, it held that it hadn't entered into the stream of interstate commerce and therefore the state had jurisdiction.

I think it was Justice McKenna who said:

> "There must be a point of time when they cease to be governed exclusively by the domestic law, and begin to be governed and protected by the national law of commercial regulation, and that moment [Rep. Tr. p. 14, lines 1 to 25]:
>
> seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or the forest are collected, and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports; nor are they in process of exportation; nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of there being intended for exportation, but taxed, without any discrimination, in

the usual way and manner in which such property is taxed in the state."

Mr. Arndt: That is correct, your Honor, but here we have on contract that provides that the purchase price is [Rep. Tr. p. 15, lines 1 to 25]:

determined by sales in interstate commerce.

The Court: But not of that sugar. It is of that season's sugar, as I understand it. I don't know anything about the sugar business and perhaps I will have an opportunity to learn something along those lines before we are through with this case. But as I understand it, they pay them not for the sugar received from those particular beets or the sale of that sugar, but rather from the current price of sugar.

Mr. Arndt: That is not exactly correct, your Honor.

Mr. Whyte: That is one of the points at issue under the contract as I understand your contention.

Mr. Arndt: The contracts prior to 1939 provided that the price to be paid was the price to be paid for sugar manufactured by the particular processor.

Mr. Whyte: That isn't the way I read this contract.

Mr. Arndt: That is how it was prior to 1939. Then since 1939 it was the sugar manufactured in California, north of the 36th parallel—not the proceeds from any other sugar, but the proceeds from the sugar manufactured during that particular year. I want to read from the document—

Mr. Whyte: Sugar grown north of the 36th parallel and sold during the year?

Mr. Arndt: I will read from the first one—that is [Rep. Tr. p. 16, lines 1 to 25]:
the first one here:

"The price per ton shall be determined upon the average net returns received for sugar manufactured at beet sugar factories located in California north of the 36th parallel."

That is 1939. That is the first one.

Mr. Whyte: Exhibit A, your Honor.

The Court: What paragraph are you reading from?

Mr. Arndt: 5.

The Court: "The price per ton for beets delivered hereunder to the company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 6 hereof) received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, and sold during the period of 12 months commencing August 1, 1939, and based upon the company's test of sugar content of the individual grower's beets in accordance with the following schedule:"

Mr. Arndt: Yes, but the point I am making is that sugar manufactured in beet sugar factories located in California north of that parallel during the year.

The Court: Let me ask this question as a matter of general information. These beets are processed in the refineries and following that is the sugar immediately put [Rep. Tr. p. 17, lines 1 to 25]:
on the market?

Mr. Whyte: There is some lag, I suppose, according to supply and demand.

Mr. Arndt: In some years it is immediately sold and some years there is a carry-over. Right now there is a shortage and it is sold immediately.

In 1939, '40 and '41 there was an overproduction and it was not immediately sold. It is as counsel says, a question of supply and demand whether sold immediately or not sold immediately. As a matter of fact, I think the cause of our present lack of supply of sugar is due to these contracts.

Mr. Whyte: I don't suppose I have to answer such a remark as that.

The Court: Another case that I was interested in is 260 U. S. 245. I don't know whether this case was cited by either counsel. There is certain language in the case that I would like to read:

> "We may, therefore, disregard any adventitious considertions referred to and their confusion, and by doing so we can estimate the contention made. It is that the products of a State that have, or are destined to have, a market in other states, are subjects of interstate commerce, though they have not moved from the place of their production or prepara-

[Rep. Tr. p. 18, lines 1 to 25]:

> tion.
>
> "The reach and consequences of the contention repel its acceptance. If the possibility, or indeed, certainty of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground.

> The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production."

Mr. Whyte: And in our case you might say "seed as yet unplanted."

[Rep. Tr. p. 19, lines 1 to 25]:

Mr. Arndt: But how can that be reconciled with the recent decision?

The Court: Gentlemen, if you can reconcile the decisions on this question you are more fortunate than I am. All I can do is follow what I consider to be the trend of these decisions. But I do not feel that it is my function to extend the rules as I now understand them. I feel that if they are to be expanded that is the function of the courts that have the final interpretation of these sections. I do not feel it is my function to legislate.

Mr. Whyte: Your Honor, under any theory there must be some allegation of facts and this complaint is absolutely barren of any allegation of fact—

The Court: You are not going to argue against me, are you?

Mr. Whyte: No, sir; I am trying to supplement your Honor's remarks to satisfy counsel here.

Mr. Arndt: May I read from some of these decisions again?

The Court: Well, I have read your cases, counsel, and I have probably given more time to this case, particularly on a motion to dismiss, than I have on any other case for a long time.

In the first place it was a new subject to me and it [Rep. Tr. p. 20, lines 1 to 25]:
was interesting. There is such a thing as convincing myself to the contrary, but at this time I am convinced that these beet growers are not entitled to protection under the Anti-Trust Act. I may be wrong. It won't be the first time I have been wrong, and it will probably not be the last time either. But I do feel that the pleadings without pleading the contracts and with this particular language in there, makes it difficult to dismiss in view of the general language used and the liability of pleadings under the Federal Rules of Civil Procedure.

Mr. Whyte: Doesn't your Honor have discretion to grant the motion with leave to amend?

The Court: I have had this rather frank, informal discussion with counsel to let them know what I have been thinking. I don't know how you gentlemen could approach the subject other than for me to sit here and listen. I was in hopes that counsel would see fit to amend the first cause of action so that we could get a definite ruling because if we try it and then I should rule as I do now you would be unable to prove that the beets went into interstate commerce and after going through all those preliminary steps and building up a record I don't know whether you would be any better off or not.

Mr. Arndt: Then how is it procedurally possible? Suppose I do amend and set forth the contracts? How is

it procedurally possible to have an appeal without a trial? [Rep. Tr. p. 21, lines 1 to 25]:

I am not going to abandon my second count.

The Court: I am not asking you to abandon anything. I want you to understand I am only trying to be helpful. I want to try to decide this case correctly. At the same time I feel that if these matters could be reached and have a ruling on this question that it would save you both money because if the court rules with you on this first cause of action then the law of the case is going to be established and it would be settled. On the other hand, if we try it and build up a record and the court reverses it and sends it back for re-trial, you would have to go through the same thing again. Now, we might do like we did in one other case we had. We might enter into—I don't know whether any statute of limitation is involved here.

Mr. Arndt: There is, your Honor. The statute will have passed—

The Court: Has it run yet?

Mr. Whyte: That would be four years under Section 343.

Mr. Arndt: The statute has run on the first year. The statute has run on one of the years. In other words, the statute ran August 31st, that is my recollection, as to one count.

The Court: We had a case where that situation arose. Counsel had several causes of action and under a stipulation and by agreement they dismissed their other causes [Rep. Tr. p. 22, lines 1 to 25]:

of action and each party waived the statute of limitation and consented that a new suit be filed at any time within

six months after a final determination of the case in the Circuit Court.

Oliver Clark and Lyons & Lyons entered into that agreement by stipulation whereby they could divide their cause of action by a stipulation and have a separate cause of action on the other points and try that.

Mr. Whyte: Counsel will be willing to stipulate to the *status quo* as to the date of the file as to any refiling. I don't know what the date is.

Mr. Arndt: You didn't plead the statute of limitation in the second and third counts, so I assume you don't content it was limited at that time.

Mr. Whyte: That is right. When was this action filed?

The Court: July 30th.

Mr. Whyte: We would be willing to so stipulate.

Mr. Arndt: There would have to be a contract authorized by a Board of Directors of the corporation. I don't think attorneys have a right to—

The Court: If we continue the matter for a week and you gentlemen discuss it you might arrive at some agreement.

Mr. Whyte: We are glad to do that. You might file

[Rep. Tr. p. 23, lines 1 to 25]:

two lawsuits if you want to and we will protect you on the statute.

The Court: One has already run in the meantime.

Mr. Whyte: I say we will protect him on the statute back to the date when he filed.

The Court: It seems to me there should be a practical way to determine it because the real money involved is in the treble damage action. The rest of it involves an interpretation of the contract. The real thing involves money and that is under Count 1. It is that count that will make the growers feel good if they recover and the refiners feel bad if it goes in that direction.

Mr. Whyte: A lot of money is involved in that count.

The Court: I realize this is not an open and shut proposition. I realize it is a close case. It make be that the court will hold that I am wrong but I don't see why we should spend weeks in trying the case when the court feels it doesn't state a cause of action.

Mr. Arndt: There are certain advantages in what your Honor says and I will endeavor to work out something along that line. I appreciate your Honor's suggestion.

The Court: If it simply goes up on the pleadings it would be a very inexpensive appeal. If it goes up on a record of days and days of transcript it would be very expensive.

[Rep. Tr. p. 24, lines 1 to 25]:

Mr. Whyte: We would be happy to work out something along the line of your Honor's suggestion.

The Court: I would be interested in any authorities you gentlemen might have on the thoughts I have expressed.

Mr. Whyte: Your Honor may rest assured we will explore that subject further.

Mr. Arndt: I would be very much interested in hearing certain judges of the United States discuss the question of the farmer being a conspirator with a sugar company.

The Court: If this were a criminal case, gentlemen, and they were named as defendants they would be held liable as conspirators. It is true the farmer is a little fellow in the picture, but in this case, considering the amount of beets that they sold, they weren't so small. The sales ran into a lot of money and it wasn't a matter of an individual growing beets on a half acre of ground. He was in the business in a big way and your evidence of conspiracy is going to be this contract itself—at least part of it as to establishing a conspiracy, and all the parties that entered into that contract have the appearance to me of being co-conspirators.

Now, it may be that I have gotten (having tried so many conspiracy cases) an obsession on the subject, but they seem to bring everything in but the kitchen sink when they try a conspiracy case. I don't know how a man who sells $100,000 worth of beets in one year can [Rep. Tr. p. 25, lines 1 to 25]:

say that he was blameless, particularly when he entered into an agreement before the crop was planted. If they had forced him into some agreement before he had his beets growing and forced him to take their own price that would be different.

Mr. Arndt: I can allege that for one year that happened—those are the facts. For one of the years the beet contracts were signed after the beets were planted.

The Court: I want to say that the thing that bothered me most on this question, was the wording of the contract and it represents to me the closest point—the contract providing for the payment out of the sale of sugar, that represents a very, very close question and for a while I felt that the interstate commerce started with the beets and that it was a continuous movement by reason of that contract. However, I have come to a different conclusion.

Mr. Arndt: Without that there would be no case.

The Court: Well, there might have been an oral contract and they might have been paid on that basis.

Mr. Arndt: When I use the word "contract" I mean either oral or written. I mean without that being in the contract. That is what differentiates it from the other cases.

The Court: That is the thing that bothered me for so long before I finally came to a different conclusion. There are two or three cases here that are about as near on all [Rep. Tr. p. 26, lines 1 to 25]:
fours as you can get them.

Mr. Arndt: On both sides.

The Court: Yes, on both sides. And that is what makes a lawsuit. If it was all one-sided you wouldn't be here. There is enough involved to try it out.

I will continue this matter until next Monday, November 19, at ten o'clock, or any other date that is agreeable.

Mr. Arndt: May we fix it for eleven o'clock that day? I have a matter in the Superior Court at 9:30 which

I would like to complete, and if we could meet here at eleven o'clock I would appreciate it.

The Court: Very well, I will take it up at eleven o'clock.

Mr. Arndt: And there will not be any argument at that time.

The Court: I will take it up at eleven o'clock. I have taken longer this morning with my calendar than I am accustomed to, but I wanted to discuss this case with you gentlemen after reading your briefs. I think you can see that I have been interested in the case.

Mr. Whyte: We certainly appreciate your Honor's interest in it.

The Court: I don't know whether that can be said by counsel on the other side.

[Rep. Tr. p. 27, lines 1 to 7]:

Mr. Arndt: I think I made that statement a few moments ago.

Mr. Whyte: Thank you very much, your Honor.

The Court: Very well, we will stand in recess until two o'clock.

(Whereupon, at 12:00 o'clock noon, the above entitled matter was concluded.)

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 18th day of May A. D., 1948.

J. D. AMBROSE,
Official Reporter

SUPREME COURT OF THE UNITED STATES

No. 75.—October Term, 1947.

Mandeville Island Farms, Inc., and Roscoe C. Zuckerman, Petitioners, *v.* American Crystal Sugar Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 10, 1948.]

Mr. Justice Rutledge delivered the opinion of the Court.

The action is for treble damages incurred by virtue of alleged violation of the Sherman Act, §§ 1 and 2. 26 Stat. 209, 38 Stat. 731, 15 U. S. C. §§ 1, 2, 7, 15. The case comes here on certiorari, 331 U. S. 800, from affirmance by the Circuit Court of Appeals, 159 F. 2d 71, of a judgment of the District Court, 64 F. Supp. 265. That judgment dismissed the amended complaint as insufficient to state a cause of action arising under the Act. In this posture of the case, the legal issues are to be determined upon the allegations of the amended complaint.[1]

The main question is whether, in the circumstances pleaded, California sugar refiners who sell sugar in interstate commerce may agree among themselves to pay a uniform price for sugar beets grown in California without

[1] The original complaint contained three counts, the first alleging violations of the Sherman Act and the second and third charging breach of contracts made in 1940 and 1941 respectively. In order to expedite decision and review upon the Sherman Act contention, by stipulation the amended complaint was filed setting forth, with an amendment to be noted, see note 5, only the allegations of the Sherman Act count. The stipulation provided for following this course without prejudice to further assertion by petitioners of rights under the two contract counts within a specified period following final determination of the Sherman Act issues.

incurring liability to the local beetgrowers under the Act. Narrowly the question is whether the refiners' agreement together with the allegations made concerning its effects shows a conspiracy to monopolize and to restrain interstate trade and commerce or one thus affecting only purely local trade and commerce.

The material facts pleaded, which stand admitted as if they had been proved for the purposes of this proceeding, may be summarized as follows: Petitioners' farms are located in northern California, within the area lying north of the thirty-sixth parallel. The only practical market available to beet growers in that area was sale to one of three refiners.[2] Respondent was one of these. Each season growers contract with one of the refiners to grow beets and to sell their entire crops to the refiner under standard form contracts drawn by it. Since prior to 1939 petitioners have thus contracted with respondent.

The refiners control the supply of sugar beet seed. Both by virtue of this fact and by the terms of the contracts, the farmers are required to buy seed from the refiner. The seed can be planted only on land specifically covered by the contract. Any excess must be returned to the refiner in good order at the end of the planting season.

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[2] It was alleged that the beets, when harvested, are "bulky and semi-perishable and incapable of being transported over long distances or of being stored cheaply or safely for any extended period . . . when ripe, deteriorated rapidly if kept in the ground and not harvested, and it was necessary to harvest them promptly when matured."

There were also allegations that initial outlay, annual upkeep and operating expenses, and time required for erecting and equipping a refinery, were so great that no competition from any new refinery could be expected short of two years at best; that the three refiners had a monopoly in the area of the supply of seeds and of refining; and that no grower in the region could sell beets at a profit except to one of the three refiners.

The standard contract gives the refiner the right to supervise the planting, cultivation, irrigation and harvesting of the beets, including the right to ascertain quality during growing and harvesting seasons by sampling and polarizing. Before delivering beets to the company, the farmers must make preliminary preparations for processing them into raw sugar.[3] The refiner has the option to reject beets if the contract conditions are not complied with and if the beets are not suitable in its judgment for the manufacture of sugar.

Prior to 1939 the contract fixed the grower's price by a formula combining two variables, a percentage of the refiner's net returns per hundred pounds from sales of sugar and the sugar content of the individual grower's beets determined according to the refiner's test.[4]

Sometime before the 1939 season the three refiners entered into an agreement to pay uniform prices for sugar beets. The mechanics of the price-fixing arrangement were simple. The refiners adopted identical form contracts and began to compute beet prices on the basis of the average net returns of all three rather than the separate returns of the purchasing refiner. Inevitably all would pay the same price for beets of the same quality.

Since the refiners controlled the seed supply and the only practical market for beets grown in northern California, when the new contracts were offered to the farmers, they had the choice of either signing or abandoning sugar beet farming. Petitioners accordingly contracted, with

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[3] These include cutting off the beet tops, trimming the crowns in a specified way, and removing all foreign substances likely to interfere with factory work.

[4] Net returns from sugar sales were measured by gross sales price less selling expenses directly applicable to sugar. Monthly settlements were made for beets delivered during the preceding month on the estimated net returns of the refiner. But final settlement had to be deferred until the end of the season when net returns could be accurately determined.

respondent under this plan during the 1939, 1940 and 1941 seasons. The plan was discontinued after the 1941 season. Because beet prices were determined for the three seasons with reference to the combined returns of the three refiners, the prices received by petitioners for those seasons were lower than if respondent, the most efficient of the three, had based its prices on its separate returns.

The foregoing allegations set forth the essential features of the contractual arrangements between the refiners and the growers and of the agreement among the refiners themselves. Other allegations were made to complete the showing of violation and injury. They relate specifically to the peculiarly integrated character of the industry, effects of the arrangements upon interstate commerce, and the relation between the violations charged and the injuries suffered by petitioners.

With reference to the industry in general, it was stated that sugar beets were grown during the seasons 1938 to 1942 on large acreages not only in northern California but also in Utah, Colorado, Michigan, Idaho, Illinois and other states. The crops so grown, when harvested, were not "sold in central markets as were potatoes, onions, corn, grain, fruit and berries, but were produced by growers under contract with manufacturers or processors and immediately upon being harvested were delivered to these manufacturers and taken to their beet sugar refineries where the sugar beets were manufactured by an elaborate process into raw sugar by the said manufacturers, who thereafter sold the resulting sugar in interstate commerce." Then follow the allegations summarized above in note 2 concerning the bulky and semiperishable nature of sugar beets, the impossibility of transporting them over long distances or of storing them cheaply or safely, their rapid deterioration when ripe, and the necessity for prompt harvesting and marketing. These allegations must be taken as intended and effective to put the

agreements complained of in the general setting of the industry's unique structure and special mode of operation.

The specific allegation is added that the sugar manufactured by respondent and the other northern California refiners from beets grown in the region "was, during all of said period [1938 to 1942], sold in interstate commerce throughout the United States."

By way of legal as well as ultimate factual conclusions the amended complaint charged that respondent had unlawfully conspired with the other northern California refiners to "monopolize and restrain trade and commerce [4] among the several states and to unlawfully fix prices to be paid the growers . . . . all in violation of the anti-trust laws . . ."; and that each refiner no longer competed against the others as to the price to be paid the growers, but paid the same price on the agreed uniform basis of average net returns.

There were further charges that prior to 1939 the northern California refiners had "competed in interstate commerce with each other as to the performance, ability and efficiency of their manufacturing, sales and executive departments, and each strove to increase sales return and decrease expenses," with the result that for 1938 respondent secured substantially greater "net gross receipts of sales of sugar" than the other refiners. These in turn were reflected in the payment of 29½ to 52½ cents per ton more to petitioners and other growers dealing with respondent than was paid by the other refiners to their growers.

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[4] At this point the words "in sugar and sugar beets" appeared in the original complaint. They were stricken from the amended complaint by petitioner's counsel prior to dismissal of that complaint. Cf. note 1. This change however did not affect numerous other allegations remaining in the amended complaint concerning the combination's restrictive and monopolistic effects upon interstate trade in sugar. See note 6 and text; also note 24 and text Part IV *infra*.

However, for the seasons 1939, 1940 and 1941, under the new uniform contracts and prices, "there was no longer any such competition . . . ." Instead it was alleged upon information and belief that, as a result of the alleged conspiracy, respondent did not conduct its interstate operations as carefully and efficiently as previously or "as it would have had said conspiracy not existed." In consequence, respondent received less in sales returns for raw sugar and incurred greater expenses than if competition had been free, and petitioners "did not receive the reasonable value of their sugar beets."

Further charges were that as "a direct, expected and planned result of said conspiracy, the free and natural flow of commerce in interstate trade was intentionally hindered and obstructed," so that instead of the refiners "producing and selling raw sugar in interstate commerce . . . in competition with each other . . . they became illegally associated in a common plan wherein they pooled their receipts and expenses and frustrated the free enterprise system . . ."; all incentive to efficiency, economy and individual enterprise disappeared; and the refiners operated, "in so far as the growers were concerned," as if they were one corporation owning and controlling all factories in the area, but with three completely separated overheads and with none of the efficiency that consolidation into one corporation might bring.[6]

[6] Paragraph XIX of the amended complaint summarized petitioners' conclusions as follows: "By reason of the foregoing acts of the defendant and its said conspirators, *interstate commerce in sugar was illegally restrained, competition therein* was not only substantially lessened but *was destroyed*, the price of sugar beets was illegally fixed, and an illegal monopoly was established, all in violation of the anti-trust laws of the United States, to the damage of plaintiffs as aforesaid." (Emphasis added.) Cf. notes 5 and 24.

We are not concerned presently with the allegations relating to the injuries and amounts of damages inflicted upon petitioners,[1] except to say that they are sufficient to present those questions for support by proof, if the allegations made to show a cause of action arising under the statute are sufficient for that purpose.

In our judgment the amended complaint states a cause of action arising under the Sherman Act, §§ 1 and 2, and the complaint was improperly dismissed.

I.

Broadly petitioners regard the entire sequence of growing the beets, refining them into sugar and distributing it, under the arrangements set forth, as a chain of events so integrated and taking place in interstate commerce or in such close and intimate connection with it that, for purposes of applying the Sherman Act, the complete sequence is an entirety and no part of it can be segregated from the remainder so as to put it beyond the statute's grasp.

Respondent, on the contrary, broadly severs the phase or phases of growing and selling beets from the later ones of refining them and of marketing the sugar. The initial growing process together with sale of the beets, and it would seem also the intermediate stage of refining, are taken to be "purely local," since all occurred entirely within California; therefore were wholly intrastate

[1] It is not clear whether damages were to be measured by the difference between the prices actually paid and those that would have been paid if based on respondent's separate returns, or by the difference between the prices paid and the prices set by the Secretary of Agriculture, pursuant to the Sugar Act of 1937, 50 Stat. 910, 7 U. S. C. § 1131 (d); see 5 Fed. Reg. 5231. But that is an issue that need not concern us now. Petitioner Mandeville Island Farms prayed judgment for $315,043.80; petitioner Zuckerman for $112,192.14.

events; and consequently were beyond the Sherman Act's reach.

Connected with this severance is the assertion that the complaint alleges no monopolistic or restrictive effects upon interstate commerce, but only such effects in the intrastate phases of the industry.

Much stress is laid upon the so-called interruption of the sequence at the refining stage. Prior to the interruption only beets are involved, afterward only sugar. Since the two commodities are different and all that affects the beets takes place in California, including the restraints alleged upon their sale, the trade and commerce in beets is wholly distinct from that in sugar and is entirely local, as are therefore the restraint and monopolization of that trade. Admittedly once the beets are converted into sugar and the sugar starts on its interstate journey to the tables of the nation, interstate commerce becomes involved. But only then is it affected, and nothing occurring before the journey begins or at any rate before the beets become sugar substantially affects or, for purposes of the statute's application, has relevance to that commerce.

Thus sugar together with its interstate sale and transportation is absolutely divorced from sugar beets, their production, sale and delivery to the refiner. Manufacture breaks the relationship and with it all consequences growing out of the restraints for the interstate processes and the purposes of the statute. In other words, since the restraints precede the interstate marketing of the sugar and immediately affect only the local marketing of the beets, they have no restrictive effect upon the trade and commerce in sugar.

This very nearly denies that sugar beets contain sugar. It certainly denies that the price of beets and restrictions upon it have any substantial relation in fact or in legal significance for the statute's purposes to the price of sugar sold interstate, when the restrictions take place within

the confines of a single state and before the interstate marketing process begins.

II.

The broad form of respondent's argument cannot be accepted. It is a reversion to conceptions formerly held but no longer effective to restrict either Congress' power, *Wickard* v. *Filburn*, 317 U. S. 111, or the scope of the Sherman Act's coverage. The artificial and mechanical separation of "production" and "manufacturing" from "commerce," without regard to their economic continuity, the effects of the former two upon the latter, and the varying methods by which the several processes are organized, related and carried on in different industries or indeed within a single industry, no longer suffices to put either production or manufacturing and refining processes beyond reach of Congress' authority or of the statute.

It is true that the first decision under the Sherman Act applied those mechanical distinctions with substantially nullifying effects for coverage both of the power and of the Act. *United States* v. *E. C. Knight Co.*, 156 U. S. 1. Like this one, that case involved the refining and interstate distribution of sugar. But because the refining was done wholly within a single state, the case was held to be one involving "primarily" only "production" or "manufacturing," although the vast part of the sugar produced was sold and shipped interstate,[8] and this was the main

[8] It has been previously noted here that the Court applied these labels as a heritage from prior decisions under the commerce clause, dealing not as the *Knight* case with an act or acts of Congress, but with the validity of state statutes, *Wickard* v. *Filburn*, 317 U. S. 111, 121; *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 543–545, an approach reflecting Marshall's idea of the mutual exclusiveness of state and national power in this area and ignoring the later evolution of different conceptions in *Cooley* v. *Board of Wardens*, 12 How. 299. See *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, 412–427.

end of the enterprise. The interstate distributing phase, however, was regarded as being only "incidentally," "indirectly," or "remotely" involved; and to be "incidental," "indirect," or "remote" was to be, under the prevailing climate, beyond Congress' power to regulate, and hence outside the scope of the Sherman Act. See *Wickard* v. *Filburn, supra,* at 119 *et seq.*

The *Knight* decision made the statute a dead letter for more than a decade and, had its full force remained unmodified, the Act today would be a weak instrument, as would also the power of Congress, to reach evils in all the vast operations of our gigantic national industrial system antecedent to interstate sale and transportation of manufactured products. Indeed, it and succeeding decisions, embracing the same artificially drawn lines, produced a series of consequences for the exercise of national power over industry conducted on a national scale which the evolving nature of our industrialism foredoomed to reversal.[9]

We do not stop to review again in detail the familiar story of the progression of decision to that end, perhaps not told elsewhere more succinctly or pertinently than

[9] Compare, *e. g., United States* v. *E. C. Knight Co.*, 156 U. S. 1, with *Standard Oil Co.* v. *United States*, 221 U. S. 1, and *United States* v. *American Tobacco Co.*, 221 U. S. 106; *Hammer* v. *Dagenhart*, 247 U. S. 251, with *United States* v. *Darby*, 312 U. S. 100; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, with *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381; *United States* v. *Chicago, etc., R. Co.*, 282 U. S. 311, and *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, with *United States* v. *Lowden*, 308 U. S. 225; *Hopkins* v. *United States*, 171 U. S. 578, with *Stafford* v. *Wallace*, 258 U. S. 495; *Employers' Liability Cases*, 207 U. S. 463, 498, with *Virginia R. Co.* v. *Federation*, 300 U. S. 515, 557, and *Weiss* v. *United States*, 308 U. S. 321; *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U. S. 495 and authorities cited, with *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, and *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408.

in *Wickard* v. *Filburn*, *supra*.[10] Suffice it to say that after coming back to life again in the *Northern Securities* case, 193 U. S. 197, for matters of transportation, the Sherman Act received a second rebirth in 1911 with the decisions in *Standard Oil Co.* v. *United States*, 221 U. S. 1, and *United States* v. *American Tobacco Co.*, 221 U. S. 106. Cf. *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 553 *et seq.*

Not thereafter could it be foretold with assurance that application of the labels of "production" and "manufacture," "incidental" and "indirect," would throw protective covering over those processes against the Act's consequences. Very soon also came the *Shreveport Rate Cases*, 234 U. S. 342, again in the field of transportation, but inevitably to add force and scope to the *Standard Oil* and *American Tobacco* rulings that manufacturing companies lay within the reach of the power and of the statute, deriving no immunity for their conduct violative of the prohibitions merely from the fact of engaging in that character of activity.

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[10] See particularly the discussion in 317 U. S. at 119–120. See also *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408; *South-Eastern Underwriters Assn.* v. *United States*, 322 U. S. 533; *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1; *United States* v. *Darby*, 312 U. S. 100; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; Stern, The Commerce Clause and the National Economy, 1933–1946, 59 Harv. L. Rev. 645, 883.

The *Filburn* case dealt with the second Agricultural Adjustment Act and the power of Congress to enact it. But, referring to the first Interstate Commerce Act and the Sherman Act, the Court in the *Filburn* case (pp. 121–122) said that those statutes "ushered in new phases of adjudication" requiring a different approach to interpretation of the commerce clause, although "when it first dealt with this new legislation, the Court adhered to its earlier pronouncements, and allowed but little scope to the power of Congress." For the latter statement the *Knight* case was cited as the principal example.

With extension of the *Shreveport* influence to general application,[11] it was necessary no longer to search for some sharp point or line where interstate commerce ends and intrastate commerce begins, in order to decide whether Congress' commands were effective. For the essence of the affectation doctrine was that the exact location of this line made no difference, if the forbidden effects flowed across it to the injury of interstate commerce or to the hindrance or defeat of congressional policy regarding it.

The formulation of the *Shreveport* doctrine was a great turning point in the construction of the commerce clause, comparable in this respect to the landmark of *Cooley* v. *Board of Wardens*, 12 How. 299. For, while the latter gave play for state power to work in the field of commerce, the former broke bonds confining Congress' power and made it an effective instrument for fulfilling its purpose. The *Shreveport* doctrine cut Congress loose from the haltering labels of "production" and "manufacturing" and gave it rein to reach those processes when they were used to defy its purposes regarding interstate trade and commerce. In doing so the decision substituted judgment as

[11] The doctrine encompassed fundamentally not merely an expanding factor in federal power over transportation. It was rather an integer in the sum of power over commerce, of which authority over transportation was but a part. The "affectation" approach was actually a revival of Marshall's "necessary and proper" doctrine, cf. *Wickard* v. *Filburn*, 317 U. S. 111, 120, 122, but unqualified by his idea of mutual exclusiveness, see note 8. Once applied to transportation and the Interstate Commerce Acts, it was inevitable that the approach would be extended to the productive and industrial phases of the national economy and the statutes regulating them, including the Sherman Act. Time and events were disclosing ever more clearly the impact of their effects upon interstate trade and commerce. And this was posing the same necessity for regulation as in the field of transportation, in order to protect and preserve the national commerce and carry out Congress' policy regarding it.

to practical impeding effects upon that commerce for rubrics concerning its boundaries as the basic criterion of effective congressional action.

The transition, however, was neither smooth nor immediately complete, particularly for applying the Sherman Act. The old ideas persisted in specific applications as late as the 1930's. But after the historic decisions of 1911, and even more following the *Shreveport* decision, a constantly growing number of others rejected the idea that production and manufacturing are "purely local" and hence beyond the Act's compass, simply because those phases of a combination restraining or monopolizing trade were carried on within the confines of a single state or, of course, of several states.[12] The struggle for supremacy between the conflicting approaches was long continued. But more and more until the climax came in the late 1930's, this Court refused to decide those issues of power and coverage merely by asking whether the restraints or monopolistic practices, shown to have the forbidden effects on commerce, took place in a phase or phases of the total economic process which, apart from other phases and from the outlawed effects, occurred only in intrastate activities.[13]

In view of this evolution, the inquiry whether the restraint occurs in one phase or another, interstate or intrastate, of the total economic process is now merely

[12] *United States* v. *Reading Co.*, 253 U. S. 26; *United States* v. *Keystone Watch Case Co.*, 218 F. 502; *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co.*, 166 F. 254; *United States* v. *E. I. Du Pont de Nemours & Co.*, 188 F. 127. See Mr. Justice Holmes dissenting in *Hammer* v. *Dagenhart*, 247 U. S. 251, 279.

[13] *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Swift & Co.* v. *United States*, 196 U. S. 375; *United States* v. *Patten*, 226 U. S. 525; *Binderup* v. *Pathe Exchange*, 263 U. S. 291; *Federal Trade Commission* v. *Pacific Paper Assn.*, 273 U. S. 52; *Stevens Co.* v. *Foster & Kleiser Co.*, 311 U. S. 255; *Bigelow* v. *RKO Radio Pictures*, 327 U. S. 251.

a preliminary step, except for those situations in which no aspect of or substantial effect upon interstate commerce can be found in the sum of the facts presented.[14] For, given a restraint of the type forbidden by the Act, though arising in the course of intrastate or local activities, and a showing of actual or threatened effect upon interstate commerce, the vital question becomes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Act's terms to constitute a forbidden consequence. If so, the restraint must fall, and the injuries it inflicts upon others become remediable under the Act's prescribed methods, including the treble damage provision.

The *Shreveport* doctrine did not contemplate that restraints or burdens become or remain immune merely because they take place as events prior to the point in time when interstate commerce begins. Exactly the contrary is comprehended, for it is the effect upon that commerce, not the moment when its cause arises, which the doctrine was fashioned to reach.

Obviously therefore the criteria respondent would have us follow furnish no basis for reaching the result it seeks. Only by returning to the *Knight* approach, and severing the intrastate events relating to the beets, including the price restraints, from the later events relating to the sugar, including its interstate sale, could we conclude

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[14] In *United States* v. *Frankfort Distilleries*, 324 U. S. 293, 297, we said: "It is true that this Court has on occasion determined that local conduct could be insulated from the operation of the Anti-Trust laws on the basis of the purely local aims of a combination, insofar as those aims were not motivated by the purpose of restraining commerce, and where the means used to achieve the purpose did not directly touch upon interstate commerce." The decisions cited were *Industrial Association of San Francisco* v. *United States*, 268 U. S. 64; *Levering & Garrigues Co.* v. *Morrin*, 289 U. S. 103; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457; cf. *Local 167* v. *United States*, 291 U. S. 293, 297, and *United States* v. *Hutcheson*, 312 U. S. 219.

there were no forbidden restraints or practices touching interstate commerce here. At this late day we are not willing to take that long backward step.

III.

We turn then to consider the questions posed upon the amended complaint that are relevant under the presently controlling criteria. These are whether the allegations disclose a restraint and monopolistic practices of the types outlawed by the Sherman Act; whether, if so, those acts are shown to produce the forbidden effects upon commerce; and whether the effects create injury for which recovery of treble damages by the petitioners is authorized.

It is clear that the agreement is the sort of combination condemned by the Act,[15] even though the price-fixing was by purchasers,[16] and the persons specially injured under the treble damage claim are sellers, not customers or consumers.[17] And even if it is assumed that the final aim of the conspiracy was control of the local sugar beet market, it does not follow that it is outside the scope of the Sherman Act. For monopolization of local business, when achieved by restraining interstate commerce, is condemned by the Act. *Stevens Co.* v. *Foster & Kleiser*, 311 U. S. 255, 261. And a conspiracy with the ultimate object of fixing local retail prices is within the Act, if the means adopted for its accomplishment reach beyond the boundaries of one state. *United States* v. *Frankfort Distilleries*, 324 U. S. 293.

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[15] *United States* v. *Frankfort Distilleries*, 324 U. S. 293, and authorities cited.

[16] Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150; *American Tobacco Co.* v. *United States*, 328 U. S. 781; *United States* v. *Patten*, 226 U. S. 525; *Swift & Co.* v. *United States*, 196 U. S. 375. Each case involved outlawed practices by persons who were both purchasers and sellers, and forbidden effects upon sellers as well as purchasers and consumers.

[17] See note 16.

The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. Nor does it immunize the outlawed acts because they are done by any of these. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150; *American Tobacco Co.* v. *United States*, 328 U. S. 781. The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated. Cf. *United States* v. *South-Eastern Underwriters Assn.*, *supra*, at 553.

Nor is the amount of the nation's sugar industry which the California refiners control relevant, so long as control is exercised effectively in the area concerned, *Indiana Farmer's Guide* v. *Prairie Farmer*, 293 U. S. 268, 279, *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 225, the conspiracy being shown to affect interstate commerce adversely to Congress' policy. Congress' power to keep the interstate market free of goods produced under conditions inimical to the general welfare, *United States* v. *Darby*, 312 U. S. 100, 115, may be exercised in individual cases without showing any specific effect upon interstate commerce, *United States* v. *Walsh*, 331 U. S. 432, 437–438; it is enough that the individual activity when multiplied into a general practice is subject to federal control, *Wickard* v. *Filburn*, *supra*, or that it contains a threat to the interstate economy that requires preventive regulation, *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 221–222.

Moreover, as we said in the *Frankfort Distilleries* case, ". . . there is an obvious distinction to be drawn between a course of conduct wholly within a state and conduct which is an inseparable element of a larger program dependent for its success upon activity which affects commerce between the states." 324 U. S. 293, 297. That statement is as true of the situation now presented as of the one then before us, although instead of restrain-

ing trade in order to control a local market petitioners control a local market in which they purchase. For this is not a case involving only "a course of conduct wholly within a state"; it is rather one involving "conduct which is an inseparable element of a larger program dependent for its success upon activity which affects commerce between the states," and in such a case it is not material that the source of the forbidden effects upon that commerce arises in one phase or another of that program.

In view of all this, it is difficult to understand respondent's argument that the complaint does not allege that the conspiracy had any effect on interstate commerce, except on the basis of the discarded criteria discussed in Part II above. The contention ignores specific allegations which we have set forth. But apart from that fact it rests only on a single grounding, which in the circumstances of this case is little, if any, more than a different phrasing of the criteria supplanted by the *Shreveport* approach.

This is that the change undergone in the manufacturing stage when the beets are converted into sugar makes the case different, for the Sherman Act's objects, than it would be if the identical commodity were concerned from the planting stage through the phase of interstate distribution, *e. g.*, if the commodity were wheat, as was true in *Wickard* v. *Filburn*, *supra*, or raisins purchased by packers from growers and shipped interstate after packing, cf. *Parker* v. *Brown*, 317 U. S. 341, 350.

We do not stop to consider specific and varied situations in which a change of form amounting to one in the essential character of the commodity takes place by manufacturing or processing intermediate the stages of producing and disposing of the raw material intrastate and later interstate distribution of the finished product, or the effects, if any, of such a change in particular situa-

tions unlike the one now presented.[18] For mere change in the form of the commodity or even complete change in essential quality by intermediate refining, processing or manufacturing does not defeat application of the statute to practices occurring either during those processes or before they begin, when they have the effects forbidden by the Act.[19] Again, as we have said, the vital thing is the effect on commerce, not the precise point at which the restraint occurs or begins to take effect in a scheme as closely knit as this in all phases of the industry. Hence in this case the mere fact that the price fixing related directly to the beets did not sever or render insubstantial its effect subsequently in the sale of sugar.

Indeed that severance would not necessarily take place if the manufacturing stage had produced a much greater change in commodities than was effected here. But under the facts characterizing this industry's operation and the tightening of controls in this producing area by the new agreements and understandings, there can be no question that their restrictive consequences were projected substantially into the interstate distribution of the sugar, as the amended complaint repeatedly alleges. Indeed they permeated the entire structure of the industry in all its phases, intrastate and interstate.

We deal here, as petitioners say, with an industry tightly interwoven from sale of the seed through all the intermediate stages to and including interstate sale and distribution of the sugar. In the middle of all these processes and dominating all of them stand the refiners. They

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[18] Compare *Arkadelphia Milling Co.* v. *St. Louis Southwestern R. Co.*, 249 U. S. 134, with *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148.

[19] *Swift & Co.* v. *United States*, 196 U. S. 375; *American Tobacco Co.* v. *United States*, 328 U. S. 781; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416.

control the supply and price of seed, the quantity sold and the volume of land planted, the processes of cultivation and harvesting, the quantity of beets purchased and rejected, the refining, and the distribution of sugar both interstate and local.

Some of these controls have been built up by taking advantage of the opportunities afforded by the industry's unique character, both natural and in its general pattern and habits of organization;[20] others by utilising the key positions these advantages give the refiners to put contractual restraints upon the growers by their separate actions;[21] and still greater ones by the refiners' ability, by virtue of their central and dominating place thus achieved, to agree among themselves upon further restrictions.

Even without the uniform price provision and with full competition among the three refiners, their position is a dominating one. The growers' only competitive outlet is the one which exists when the refiners compete among

[20] The natural factors include the peculiar nature of the crop in its limitation to a single primary and commercially profitable use, the necessity for immediate and nearby marketing to follow directly upon harvesting, and the well-known fact that sugar beets are grown only in widely scattered regions specially adapted to the crop in soil, climate and availability of water in large quantities during the growing season.

[21] Resulting in large part from the natural limitations stated in note 20 and the fact that extracting the sugar content from the beets is an elaborate and technical process, is the further important fact that the processing cannot be done by the growers individually or even in small cooperative groups, but requires specialised and large scale business organization, equipment and investment. All these factors and perhaps others combine to make the refining stage of the industry a specialized manufacturing one to be carried on separately from growing, to establish the refiners' key place in the entire industry, and thus to leave the growers completely at the refiners' mercy for the profitable production of beets except as the latter may compete among themselves.

themselves. There is no other market. The farmers' only alternative to dealing with one of the three refiners is to stop growing beets. They can neither plant nor sell except at the refiners' pleasure and on their terms. The refiners thus effectively control the quantity of beets grown, harvested and marketed, and consequently of sugar sold from the area in interstate commerce, even when they compete with each other. They dominate the entire industry. And their dominant position, together with the obstacles created by the necessity for large capital investment and the time required to make it productive, makes outlet through new competition practically impossible. Upon the allegations, it is absolutely so for any single growing season. A tighter or more all-inclusive monopolistic position hardly can be conceived.

When therefore the refiners cease entirely to compete with each other in all stages of the industry prior to marketing the sugar, the last vestige of local competition is removed and with it the only competitive opportunity for the grower to market his product. Moreover it is inconceivable that the monopoly so created will have no effects for the lessening of competition in the later interstate phases of the over-all activity or that the effects in those phases will have no repercussions upon the prior ones, including the price received by the growers.

There were indeed two distinct effects flowing from the agreement for paying uniform growers' prices, one immediately upon the price received by the grower rendering it devoid of all competitive influence in amount; the other, the necessary and inevitable effect of that agreement, in the setting of the industry as a whole, to reduce competition in the interstate distribution of sugar.

The idea that stabilization of prices paid for the only raw material consumed in an industry has no influence toward reducing competition in the distribution of the finished product, in an integrated industry such as this,

is impossible to accept. By their agreement the combination of refiners acquired not only a monopoly of the raw material but also and thereby control of the quantity of sugar manufactured, sold and shipped interstate from the northern California producing area. In substance and roughly, if not precisely, they allocated among themselves the market for California beets substantially upon the basis of quotas competitively established among them at the time the uniform price arrangement was agreed upon. It is hardly likely that any refiner would have entered into an agreement with its only competitors, the effect of which would have been to drive away its growers, or therefore that many of the latter would have good reason to shift their dealings within the closed circle. Thus control of quantity in the interstate market was enhanced.

This effect was further magnified by the fact that the widely scattered location of sugar beet growing regions and their different accessibilities to market [22] give the refiners of each region certainly some advantage over growers and refiners in other regions, and undoubtedly large ones over those most distant from the segment of the interstate market served by reason of being nearest to hand.

Finally, the interdependence and inextricable relationship between the interstate and the intrastate effects of the combination and monopoly are shown perhaps most clearly by the provision of the uniform price agreement which ties in the price paid for beets with the price received for sugar. The percentage factor of interstate receipts from sugar which the grower's contract specifies shall enter his price for beets makes that price dependent upon the price of sugar sold interstate. The uniform agreement's effect, when added to this, is to deprive the

[22] See note 20.

grower of the advantage of the individual efficiency of the refiner with which he deals, in this case the most efficient of the three, and of the price that refiner receives. It is also to reflect in the grower's price the consequences of the combination's effects for reducing competition among the refiners in the interstate distribution of sugar.

In sum, the restraint and its monopolistic effects were reflected throughout each stage of the industry, permeating its entire structure. This was the necessary and inevitable effect of the agreement among the refiners to pay uniform prices for beets, in the circumstances of this case. Those monopolistic effects not only deprived the beet growers of any competitive opportunity for disposing of their crops by the immediate operation of the uniform price provision; they also tended to increase control over the quantity of sugar sold interstate; and finally by the tie-in provision they interlaced those interstate effects with the price paid for the beets.

These restrictive and monopolistic effects, resulting necessarily from the practices allegedly intended to produce them, fall squarely within the Sherman Act's prohibitions, creating the very injuries they were designed to prevent, both to the public and to private individuals.

It does not matter, contrary to respondent's view, that the growers contracting with the other two refiners may have been benefited, rather than harmed, by the combination's effects, even if that result is assumed to have followed. It is enough that these petitioners have suffered the injuries for which the statutory remedy is afforded. For the test of the legality and immunity of such a combination, in view of the statute's policy, is not that some others than the members of the combination have profited by its operation. It is rather whether the statute's policy has been violated in a manner to produce the general consequences it forbids for the public and

the special consequences for particular individuals essential to the recovery of treble damages. Both types of injury are present in this case, for in addition to the restraints put upon the public interest in the interstate sale of sugar, enhancing the refiner's controls, there are special injuries affecting the petitioners resulting from those effects as well as from the immediate operation of the uniform price arrangement itself.

The fact that that arrangement is the source of both effects cannot be taken to mean that neither is outlawed by the statute, in view of their interdependence and the completely unified and comprehensive nature of the scheme as respects its interstate and intrastate phases. The policy of the Act is competition. It cannot be flouted, as has been done here, by artificial nomenclatural severance of the plan's forbidden effects, any more than by such a segmentation of the integrated industry into legally unrelated phases. Nor can the severance be made in such a case merely by virtue of the fact that a refining or manufacturing process constitutes an intermediate stage in the whole.

To compare an industry so completely interlocked in all its stages, by all-inclusive contract as well as by industrial structure and organization, with one like producing, processing, and marketing fruits, vegetables, corn, or other products, susceptible of various uses and under conditions affording varied outlets for market, both local and interstate, in the raw or refined state, in which neither such a contractual nor such an industrial integration exists, is to ignore the facts of industrial life. So is it also to make conclusive comparisons with other industries in which the manufacturing process requires and has available a greater variety of raw materials for making the finished product, and involves a longer and more extensive process of change, than does extracting the sugar content of beets to make raw sugar.

We deal with the facts before us. With respect to others which may be significantly different, for purposes of violating the statute's terms and policy, we await another day.[23]

IV.

Little more remains to be said concerning the amended complaint. The allegations comprehend all that we have set forth. We do not stop to restate them, leaving their substance at this point for reference to the summary made at the beginning of this opinion.

Respondent has presented its argument as if the amended complaint omitted all reference to restraint or effects upon interstate trade in sugar and confined these allegations to the trade in beets. It is true that at the hearing which followed filing of the amended complaint, petitioners at one point, apparently in response to some intimation from the court, eliminated the words "sugar and sugar beets" from one of the allegations that the refiners had conspired to "monopolize and restrain trade and commerce among the several states . . . ."[24]

[23] It is suggested that *Parker* v. *Brown*, 317 U. S. 341, is inconsistent with our conclusion here. The Court there held first that the Sherman Act did not apply because the program was sponsored by the State of California. Contrary to the present suggestion, the opinion assumes that the relation between the intrastate and the interstate commerce in raisins was sufficient to justify federal regulation, if the state-sponsored program of prorating had been "organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate." 317 U. S. at 350. The case therefore contains no suggestion, on the facts or on the law, contrary to the result now reached.

[24] See note 5. By way of explaining the deletion, the record contains only the statement of the stipulation, cf. note 1, that the amended complaint eliminated "what the Court considered an ambiguity in the [original] complaint." With no further support from the record, it has been assumed that the ambiguity so elided was the reference to

Respondent takes this elision as effective to constitute an express disavowal by petitioners of any charge of restraint of trade in sugar, the only interstate commodity. The amendment did not eliminate or affect numerous other allegations which in effect repeated the charge in various forms and with reference to various specific effects upon interstate as well as local phases of the commerce. Some of these explicitly specified trade or commerce in sugar,[25] others designated the trade affected as interstate, which on the facts could mean only sugar. Moreover, petitioners deny the disavowal, both in intent and in effect. They say the elision was insubstantial, since in

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restraint of interstate trade in *sugar* and hence the petitioners in making it stated themselves out of court.

Apart from the fact that the elision did not affect numerous other like allegations, see note 6 and text, the deletion included the specifications of both "sugar and sugar beets." From this the literal inference, if any of the sort could be made, would be that the elision was intended to withdraw all charges of monopoly or restraint of trade, whether in sugar or in beets, and thus to concede there was no case under the Sherman Act, a conclusion obviously at war with the remaining allegations of restraint of trade in both sugar and sugar beets.

But, if any difference between the two could be assumed as having been intended, it is much more likely that the supposed ambiguity deleted arose from the reference to interstate trade in *beets*, since the allegation as a whole referred only to "interstate trade and commerce" and on the facts pleaded the only trade in beets was intrastate (considered apart, as respondent would do, from its relation to and effects upon the trade in sugar).

In any event the case is to be decided upon the sum of the allegations of the amended complaint, not upon conjecture as to why a particular and, we think, immaterial amendment of one allegation was made. Indeed the entire allegation could have been elided without affecting the substance or validity of the remainder of the amended complaint to state a cause of action under the Sherman Act. There was more than enough without it.

[25] *E. g.*, in the allegation quoted in note 6, as well as others set forth in the text preceding that note.

the clause from which it was made the allegation of conspiracy to monopolize and restrain interstate commerce remained, and the only interstate trade was in sugar. We think the amendment, for whatever reason made, was not effective to constitute a disavowal, disclaimer or waiver.

The allegations are comprehensive and, for the greater part specific, concerning both the restraints and their effects. They clearly state a cause of action under the Sherman Act.

The judgment of the Circuit Court of Appeals is reversed, and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 75.—October Term, 1947.

Mandeville Island Farms, Inc. and Roscoe C. Zuckerman, Petitioners, v. American Crystal Sugar Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 10, 1948.]

Mr. Justice Jackson with whom Mr. Justice Frankfurter joins, dissenting.

It appears to me that the Court's opinion is based on assumptions of fact which the petitioner disclaimed in the court below. These assumptions are permissible inferences from the amended complaint only if we disregard the way in which the amendments came about.

On hearing, the trial judge apparently considered that a cause of action would be stated only if the complaint alleged that the growing contracts affected the price of sugar in interstate commerce. But the contracts accompanying the pleadings indicated that the effects ran in the other direction. The market price of interstate sugar was the base on which the price of beets was to be figured. The latter price was derived from the income which respondent and others received from sugar sold in the open market over the period of a year. The trial judge therefore suggested that the references to restraint of trade in sugar in interstate commerce created an ambiguity in the complaint. Accordingly, the plaintiff, at the suggestion of the court and for the specific purpose of this appeal, filed an amended complaint which completely eliminated the charge that the agreements complained of affected the price of sugar in interstate commerce, and eliminated the two other counts "to enable the Court herein to pass

upon the sufficiency of the first count and, further, to make possible a speedy and inexpensive review by appeal if the Court held that the first count was insufficient."[1]

[1] The full text of the Stipulation and Order which was executed by counsel for both parties, and by the District Judge, is as follows:

"Whereas, in oral argument on November 13, 1945, on the motion of defendant to dismiss, etc., Hon. Ben Harrison, the United States District Judge before whom said matter was argued, stated from the bench to counsel herein that he felt that the first cause of action, if supplemented by copies of the contracts attached to the defendant's motion to dismiss, would not state facts sufficient to constitute a cause of action, and suggested that it would be a tremendous saving of time and expense if the complaint were amended (a) by setting forth copies of the agreements involved in the first count, (b) by eliminating what the Court considered an ambiguity in the complaint, and (c) by the parties entering into a stipulation to eliminate from the pleadings, for the purpose of the appeal only and without prejudice to the rights of the plaintiffs, the second and third causes of action, so as to enable the Court herein to pass upon the sufficiency of the first count on its merits and, further, to make possible a speedy and inexpensive review by appeal if the Court held that the first count was insufficient;

"Now, Wherefore, the parties stipulate, without plaintiffs' waiving their rights under the second and third counts and without prejudice to any of plaintiffs' rights thereunder, as follows, to-wit:

"1. Plaintiffs will file an amended complaint herein, attaching copies of the forms of contract in use in 1938, 1939, 1940 and 1941, and omitting the second and third counts.

"2. Said omission of the said second and third counts shall be without prejudice to any of the rights of the plaintiffs as to any cause or causes of action included or includible therein by amendment, and shall not be a retraxit or a dismissal with prejudice.

"3. Defendant herein waives, for the period of time hereinafter set forth, any and all statutes of limitations now or hereafter applicable to the second or third causes of action or any matters therein set forth or includible therein by amendment, and waives the defense of laches as to the second and third causes of action or any matters therein set forth or includible therein by amendment.

"4. Plaintiffs may, at any time prior to six months after the decision on appeal as to the sufficiency of the first count has become final, either amend the amended complaint herein by realleging said second

The District Court then held that since no beets whatever moved in interstate commerce and since there was no charge in the amended complaint that the cost or quality of the product which did move in interstate commerce was in any way affected, no cause of action was stated. The appeal was taken and the Circuit Court of Appeals affirmed.

This Court, however, decides the case as though the original complaint as it related to sugar had not only remained unchanged but had been proved by evidence. Despite the deletion from the complaint of the allegation concerning the price of sugar, the Court assumes, without allegation or evidence, that the price of sugar is affected and on that basis builds its thesis that the Sherman Act has been violated. I think in fairness to the litigants and the District Court, the petitioner's case should be disposed of here on the same basis on which it was pleaded to the courts below.

On the proceedings in the courts below, I would affirm the judgment of the District Court.

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and third counts or any portion of either, or, at any time during said period, file a separate action or actions setting forth said second and third counts or any portion of either, all with the same force and effect as if said second and third counts were continuously included herein as second and third counts from the date of the commencement of this action.

"5. The waiver of the statute of limitations and of the defense of laches herein set forth, and the stipulation permitting the amendment of the amended complaint or the filing of a separate action or actions hereinabove set forth, shall continue until six months after the determination on appeal as to the sufficiency of the first count has become final."